

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
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FISCAL IMPACT STATEMENT

LS 7847

BILL NUMBER: HB 2091

DATE PREPARED: Jan 20, 1999

BILL AMENDED:

SUBJECT: Various family law issues.

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**FUNDS AFFECTED: X GENERAL
DEDICATED
FEDERAL**

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- (1) Establishes a rebuttable presumption that joint legal custody and joint physical custody is in the best interests of a child in dissolution of marriage and paternity cases;
- (2) Changes the factors that the court uses in determining whether to order joint physical and joint legal custody;
- (3) Provides that whenever the court does not order joint physical custody, a noncustodial parent is entitled to certain minimum visitation, and establishes guidelines for a court to use in ordering visitation and prescribes standards for parties to follow to facilitate visitation;
- (4) Requires a court that finds an intentional violation of a visitation order to be confined to the county jail for seven days for each violation of the court's visitation order;
- (5) Provides that whenever parties have contested issues arising out of a dissolution of marriage case, the court shall refer the proceeding to mediation or counseling;
- (6) Provides that whenever a visitation order is not complied with, a court may deposit child support funds in an escrow account until the visitation order is complied with;
- (7) Provides that a court may not decree a legal separation or a dissolution of marriage unless the parties participate in at least 40 hours of court approved counseling;
- (8) Provides grounds for a custody modification if a person who has been awarded joint physical or joint legal custody, or both, moves outside Indiana or at least 100 miles from the person's county of residence;
- (9) Provides that whenever a person is delinquent in the payment of child support, the court shall order the person to pay the delinquent support at certain regular intervals provided that the other parent has complied with court orders relating to the paternity or dissolution of marriage action, including court orders involving custody and visitation;
- (10) Provides that a judge who fails to comply with certain statutory provisions relating to dissolution of marriage, paternity, custody, or visitation commits official misconduct and: (1) is not entitled to judicial immunity; and (2) may not be represented at the state's expense in an action against the judge for official misconduct;

- (11) Requires that within each two year period that a judge presides over a court with jurisdiction over dissolution of marriage or paternity matters, the judge shall participate in 40 hours of training in shared parenting;
- (12) Repeals certain provisions concerning joint legal custody and makes certain other changes.

Effective Date: July 1, 1999.

Explanation of State Expenditures: Provision (2): It is estimated that 50% of all counties (including Lake, Allen, Marion, Clark, Floyd, Harrison, Vanderburgh, and St. Joseph) have implemented visitation guidelines, however the guidelines are not standardized across counties.

Provision (11): If the training is provided by the Indiana Judicial Conference, the cost will be incurred by the state. It is estimated that it would cost the state a total of approximately \$150,000 to present one 40-hour training on shared parenting every two years to all 230 judges and 35 magistrates that have jurisdiction over dissolutions of marriage. This figure includes lodging, meals, reimbursement of mileage, materials, space, and the cost of a speaker.

Explanation of State Revenues: Provision (10): If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund could increase. The maximum fine for a Class A misdemeanor is \$5,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior, county or municipal court (courts of record), 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

Explanation of Local Expenditures: Provision (1) will increase the number of hearings that the court conducts because joint physical custody arrangements are often difficult for both parties in practice. A joint physical custody arrangement usually requires more judicial time to work out, and often the parties can't agree on the terms of the joint physical custody arrangement, or have difficulty complying with the terms of the arrangement once it is implemented. All of these factors increase the likelihood that more court hearings will be required.

Provision (4): Local expenditures for jail operations may increase if the court finds parents in intentional violation of a visitation order and requires them to be detained in jail for seven days. At approximately \$44 per day, the estimated cost to detain an individual in a jail for seven days is \$308.

Provisions (5) and (7) could increase the need for counseling services in counties where large numbers of dissolutions of marriage petitions are filed. County costs could increase if respondents cannot pay for the court-mandated mediation or counseling. In counties with a large number of filings, courts may need to hold hearings to enforce attendance at the mandated mediation and counseling sessions and may need to hold additional contempt hearings if people refuse to attend. Organizations like the Marion County Domestic Relations Bureau provide mediation services for child custody and visitation issues. Their services are provided on a sliding scale basis, with the cost ranging from \$1 to \$85 per hour depending on each party's income. Visiting Nurse Service, Inc. conducts the "Children Cope with Divorce" program. Courts in at least 13 counties require that divorcing parents attend the program, with the goal of training parents how to help their children cope with divorce. The program is currently provided in Indianapolis (5-6 times a month, with 50-60 people at each one), Bloomington (once a month, with an average of 70 people in attendance), in Noblesville, Batesville, and Shelbyville, the seminars are conducted once a month in each county with an average of 50 people at each one. The cost is \$35 per person, but for those who are unable to pay the full \$35,

a sliding scale is used based on income.

Provision (8) will have a minimal impact because it is already grounds for a custody modification when one party moves a significant distance away.

Provision (10): Official misconduct is a Class A misdemeanor is punishable by up to one year in jail. The average daily cost to incarcerate someone in a county jail is approximately \$44.

Provision (11): If the training is provided by a private entity like the Indiana Continuing Legal Education Forum, the cost to send the judges to the mandatory training will most likely be paid by the county, from the court's budget. It is estimated that a private provider would charge approximately \$850 per judge for a 40-hour training on shared parenting.

Explanation of Local Revenues: Provision (10): If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed, and if collected would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed, and if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

State Agencies Affected: Indiana Judicial Conference.

Local Agencies Affected: Trial courts, local law enforcement agencies; all courts with domestic relations jurisdictions.

Information Sources: Judge Donahue, Clark County Circuit Court, (812) 285-6309; Jeff Bercovitz, Indiana Judicial Center, 232-1313; Visiting Nurse Service, Inc., 722-8201; Jeff Lawson, Indiana Continuing Legal Education Forum, 637-9102; Janice Davidson, Marion County Domestic Relations Counseling Bureau, 327-3858.